Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Use of Portions of Returned 2 GHz	)	IB Docket No. 05-221
Mobile Satellite Service Frequencies	)	

To: The Commission

COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™

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SUMMARY

The record in IB Docket 05-220 demonstrates that there is no basis to give ICO and TMI any additional spectrum, whether it be 10.67 MHz or the additional 13.33 MHz at issue here. Both entities make claims for more spectrum, but neither demonstrates it is actually *needed.*

The record also reveals – as evidenced by the breadth of comments from various segments of the communications industry, including CMRS, SDARS, technology companies, and other MSS providers – that the 24 MHz of unassigned spectrum is of great value and demand is significant. One commenter has concluded that the spectrum would be worth more than *nine billion dollars* if reallocated and made available at auction. Principles of sound spectrum management dictate that in light of such interest, the FCC should evaluate the best use of the unassigned spectrum – all 24 MHz – in a single rulemaking proceeding.

Ultimately, the best use of the unassigned spectrum should be determined by market forces at auction by reallocating the spectrum to flexible, terrestrial use. Reallocation is particularly appropriate given that ICO and TMI are seeking additional spectrum for terrestrial ATC purposes. Like any other party, ICO and TMI would be able to acquire additional spectrum at auction for terrestrial use. Reallocation is also consistent with current exploding spectrum demands for terrestrial wireless vis-à-vis MSS: using the most conservative assumptions, terrestrial CMRS subscription is more than *200 times* that of existing MSS systems.

Given the failure of ICO and TMI to adequately demonstrate any need for additional spectrum, the inescapable conclusion that they seek additional spectrum for future terrestrial operations and not MSS, and the value of this spectrum to other terrestrial and satellite service providers, the FCC should commence a rulemaking to address the best use of the full 24 MHz of unassigned spectrum. In that rulemaking, the FCC should reallocate the spectrum for terrestrial, flexible use and auction it to allow the market to determine its highest and most efficient use.

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CTIA – The Wireless Association™ ("CTIA")[1] hereby responds to the public notice issued on June 29, 2005 seeking comment on the treatment of a 13.33 MHz portion of the 24 MHz of unassigned spectrum in the 2 GHz Mobile Satellite Service ("MSS") bands.[2] In a companion proceeding, IB Docket 05-220, the Commission has sought comment on its intention to give the remaining 10.67 MHz of unassigned spectrum to the two MSS licensees in the 2 GHz band, ICO Satellite Services ("ICO") and TMI Communications and Company, Limited Partnership ("TMI").[3] TMI and ICO are not operational and have *no* immediate spectrum needs. For the reasons stated below and in the record in IB Docket 05-220, the Commission should evaluate the best use of the full 24 MHz of unassigned spectrum in a single rulemaking. To ensure that the spectrum is put to its most efficient and effective use, the spectrum should be reallocated to flexible, terrestrial use and made available at auction to all interested parties.

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[1] CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

[2] *Public Notice*, Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies, FCC 05-134, IB Docket 05-221 (rel. June 29, 2005).

[3] *Public Notice*, Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies, FCC 05-133, IB Docket 05-220 (rel. June 29, 2005) ("*Public Notice*"). Unless otherwise noted, comments and reply comments cited herein refer to those submitted in IB Docket 05-220.

INTRODUCTION

The Commission must decide how best to address the future of 24 MHz of unassigned spectrum now available in the 2 GHz MSS bands (2000-2020 MHz and 2180-2200 MHz). Only two of the original eight 2 GHz MSS licensees – ICO and TMI – continue to hold licenses following the surrender of three 2 GHz MSS licenses earlier this year[4] and the nullification of three other 2 GHz MSS authorizations for milestone non-compliance in 2003.[5] ICO and TMI are each authorized for 8 MHz of the current 40 MHz MSS allocation in the 2 GHz band.[6] They both seek to have the FCC divide the full 24 MHz equally between them, giving each a 20 MHz spectrum assignment (representing a 250% increase in their currently assigned spectrum) years before either is due to commence service.

The FCC has bifurcated its consideration of the use of the 24 MHz of unassigned spectrum into two companion proceedings. In the first proceeding, IB Docket 05-220, the FCC stated its intent to give TMI and ICO 10.67 MHz of the 24 MHz. In the instant proceeding, IB Docket 05-221, the FCC seeks comment on three options for utilizing the remaining 13.33 MHz, including (i) giving the remaining spectrum to TMI and ICO; (ii) reallocating the spectrum to other uses; or (iii) making the spectrum available in a new MSS processing round. CTIA and others recently filed comments and/or reply comments in IB Docket 05-220, demonstrating that ICO and TMI failed to meet the high burden necessary for the Commission to give them an

[4] *Public Notice* at 1 & n.2.

[5] *See Mobile Communications Holdings, Inc. and Constellation Communications Holdings, Inc.*, 18 FCC Rcd 1094 (IB 2003), *aff'd*, 19 FCC Rcd 11631 (2004), *appeal pending sub nom. ICO Global Communications (Holdings) Limited v. FCC*, No. 04-1428 (D.C. Cir. filed July 23, 2004); *Globalstar, L.P.*, 18 FCC Rcd 1249 (IB 2003), *aff'd*, 19 FCC Rcd 11548 (2004), *recon. pending*.

[6] *See TMI Communications and Company, Limited Partnership and TerreStar Networks Inc.*, 19 FCC Rcd 12603, 12622 ¶ 54 (2004) ("*TMI Reinstatement Order*"); *ICO Satellite Services G.P.*, DA 05-1504, ¶ 34 (IB rel. May 24, 2005) ("*ICO Modification Order*").

additional 10.67 MHz of spectrum, let alone 24 MHz.[7] As discussed below, the record in that docket shows that TMI and ICO seek "a windfall assignment of additional spectrum" for their future *terrestrial* ("ATC") operations, which is simply "not germane to whether [they] should be entitled to additional *MSS* spectrum."[8] Where additional spectrum is to be used for terrestrial service, it should be reallocated to terrestrial, flexible use services and made available at auction to all interested parties, including TMI or ICO.

Given the failure of ICO and TMI to adequately demonstrate any need for additional spectrum, the inescapable conclusion that they seek additional spectrum for future terrestrial operations and not MSS, and the value of this spectrum to other satellite and terrestrial service providers, as demonstrated in IB Docket 05-220, the FCC should commence a rulemaking to address the best use of the full 24 MHz of unassigned spectrum. In that rulemaking, the FCC should reallocate the spectrum for terrestrial, flexible use and allow the market to determine its highest and most efficient use through the auction process.

I. THE RECORD IN IB DOCKET 05-220 DEMONSTRATES THERE IS NO BASIS TO GIVE TMI OR ICO ANY OF THE 24 MHz OF UNASSIGNED SPECTRUM

A. ICO and TMI Have Failed to Show Any Need for Additional Spectrum, Let Alone for their *Satellite* Offerings

The record in IB Docket 05-220 demonstrates that ICO and TMI have failed to show any *need* for additional spectrum – whether it be 10.67 MHz or the additional 13.33 MHz at issue

[7] CTIA's comments and reply comments in IB Docket 05-220 are hereby incorporated by reference into the record of the instant proceeding and are attached hereto as Attachments A and B. ICO states that the many opponents of the requested spectrum giveaway lack standing under Section 316 of the Communications Act to participate in the IB Docket 05-220 proceeding because their licenses will not be modified by the proposed reassignment. Reply Comments of ICO at 3. ICO ignores the fact that the *Public Notice* in IB Docket 05-220 expressly found it in the public interest to invite broader public comment *beyond* those whose licenses may be affected: "although we are not required to seek additional comment under Section 316, *we find in this case that it would be in the public interest to do so*." *Public Notice* at 2 (emphasis added).

[8] *See* Comments of Inmarsat Ventures Limited ("Inmarsat") at 18, 24 (emphasis added).

here – for their systems, let alone for their planned satellite service offerings. TMI and ICO have not commenced operations and are not serving any subscribers, which is significant for at least two reasons. First, TMI and ICO are currently authorized for 8 MHz yet, the Commission has concluded that "five megahertz of spectrum . . . is sufficient for commencement of service."[9] Thus, TMI and ICO already have access to 3 MHz of expansion spectrum apiece.[10] Second, neither has explained why the FCC should set aside its prior conclusion that abandoned 2 GHz spectrum "may be available for expansion of systems *that are operational*."[11] Because TMI and ICO already have more spectrum than necessary to initiate operations, each must explain why 8 MHz is insufficient to satisfy its future spectrum needs.[12] Neither has done so.

Moreover, it remains uncontroverted that ICO and TMI have failed to provide technical showings or quantitative projections of customer demand or anticipated traffic/loading levels sufficient to warrant the grant of additional spectrum. ICO, which has literally submitted *no* evidence to substantiate its purported need for more spectrum,[13] makes the remarkable claim that

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[9] *Establishment of Policies and Service Rules for MSS in the 2 GHz Band, Report and Order*, 15 FCC Rcd 16127, 16138 ¶ 17 (2000) ("*2 GHz Order*").

[10] *See* Comments of Inmarsat at 21 ("Neither TMI nor ICO has presented any showing that the minimum amount of spectrum needed to commence mobile satellite service at 2 GHz exceeds its current reservation of 4 MHz in each direction . . . .").

[11] *2 GHz Order*, 15 FCC Rcd at 16139 ¶ 18 (emphasis added).

[12] TMI also ignores its affiliation with L-Band licensee Mobile Satellite Ventures ("MSV"), which has access to up to 28 MHz of spectrum in the L-Band and recently received ATC authority. *See* Andrew Bary, "For a New Cellular Play, Opportunity Is Calling," Barrons, June 27, 2005. TMI currently has a significant (22%) equity interest in MSV. *See* Section 1.65 Amendment to File No. 189-SAT-LOI-97 *et al*. (Mar. 11, 2005). TMI is also seeking to assign its 2 GHz authorization to TerreStar Networks Inc. ("TerreStar"). TerreStar is controlled by Motient Corporation, which is also the largest equity holder (49%) of MSV. *See id*.; Section 1.65 Amendment to File No. SAT-LOI-19970926-00161 *et al*. (June 15, 2005). Thus, TMI's 8 MHz license in the 2 GHz band, coupled with MSV's access to 28 MHz in the L-Band, provide these affiliated entities with *current access to 36 MHz of nationwide spectrum*. As T-Mobile USA, Inc. ("T-Mobile") explains, these "additional [L-Band] spectrum holdings . . . could be used by TMI in coordination with its 2 GHz spectrum," Comments of T-Mobile at 4 n.11, obviating any purported need for additional spectrum.

[13] ICO repeats its earlier unsubstantiated claims to need 2 x 15 MHz of spectrum, but does not dispute that these figures are both unsupported and outdated because they do not take into account ATC, *see infra* Section I.B, or the fact that ICO has abandoned its non-geostationary satellite orbit ("NGSO") constellation in favor of a geostationary satellite orbit ("GSO") system. *See* Comments of CTIA at 14. The 1997 applications of The Boeing Company and

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it "is not required to provide a technical or otherwise compelling showing of need for additional spectrum."[14] ICO and TMI simply state that additional spectrum will "allow" or "enable" them to, among other things, expand broadband access, serve homeland security and public safety needs, enhance competition, and extend service to rural America.[15] If ICO's claim were correct, satellite licensees can acquire more spectrum for free simply by associating their requests with important public interest goals – without any obligation to show that additional spectrum is actually *needed* to achieve them. ICO's assertion is particularly suspect in the case of 2 GHz MSS, where licenses were issued and ATC rules adopted on the presumption that these public benefits would be provided within *existing* spectrum assignments.[16] Under these circumstances, the public interest in ensuring the best and most efficient use of scarce spectrum commands more than a bare "more is better" claim when valuable spectrum rights are at stake.[17]

Nor has TMI provided any meaningful submission. CTIA explained in IB Docket 05-220 that TMI's spectrum claims are based on the backward logic that large equipment orders are

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(footnote continued)

Celsat America, Inc. seeking access to large amounts of spectrum, cited by ICO in its Reply Comments at 9 n.28, are irrelevant; both applications well predate the availability of ATC and both entities have since surrendered their licenses for cancellation.

[14] Reply Comments of ICO at 10.

[15] *See id.* 4-9; *see also* Reply Comments of TMI at 4-7.

[16] Specifically, the initial 2 GHz MSS licenses were awarded in 7 MHz assignments to "provide new and expanded regional and global data, voice and messaging services," "enhance competition," and "promote communications to . . . rural and native American areas." *2 GHz Order*, 15 FCC Rcd at 16128-29 ¶ 1. Similarly, the Commission provided for ATC to "improve the efficiency of [MSS] licensed systems," facilitate "ubiquitous digital telecommunications and broadband services," "enhance the nation's overall ability to maintain critical telecommunications infrastructure in times of crisis or disaster," and strengthen competition – all "with the same amount of spectrum." *Flexibility for the Delivery of Communications by MSS Providers, Report & Order*, 18 FCC Rcd 1962, 1974-79 ¶¶ 20, 22, 23, 29, 30 (2003) ("*ATC Order*").

[17] *See* Comments of Inmarsat at 15; *cf. Review of Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit MSS Systems in the 1.6/2.4 GHz Bands, Notice of Proposed Rulemaking*, 18 FCC Rcd 1962, 2089-90 ¶¶ 267-68 (2003) ("*Big LEO NPRM*") (modifying the license of Iridium to provide it with access to additional spectrum only after "seeking detailed comment regarding its actual and current spectrum use and *substantiated projections of its future spectrum requirements*") (emphasis added). Interestingly, while ICO claims it is not required to make a "compelling showing of need," it criticizes Inmarsat for "fail[ing] to substantiate its alleged need for additional spectrum." *See* Reply Comments of ICO at 12.

necessary to keep equipment prices down, which in turn necessitates having 15-25 million customers (with no evidence such a customer base is even possible).[18] Inmarsat agrees, describing TMI's claims for more spectrum as premised on a flawed "'if we build it, they will come' business plan to reverse engineer its purported spectrum 'needs.'"[19] Spectrum is too valuable a resource to be given away on the basis of such a "circular self-justification."[20] TMI's other claim – that its system is bandwidth-limited given the power levels of its planned satellite – is equally unavailing. As Inmarsat explains, "[i]f that type of showing were adequate to obtain a spectrum assignment, everyone could meet it, simply by specifying an over-sized spacecraft from their manufacturer."[21]

Even on reply, TMI fails to substantiate in any way its claimed spectrum needs, offering no rebuttal to the aforementioned fatal flaws in its technical "showing."[22] Instead, TMI essentially argues that its needs are irrelevant because the Commission has established a policy of automatic spectrum reassignment.[23] CTIA has previously demonstrated that TMI's claim is without merit, as the Commission expressly stated in the *Space Station Licensing* proceeding that the redistribution policy would not apply to 2 GHz MSS.[24] ICO and TMI are seeking a spectrum

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[18] *See* Comments of CTIA at 10-11. Indeed, if TMI's analysis were correct, a customer base of up to 100 million would be necessary to sustain the four MSS providers that have stated their intent to offer MSS/ATC services. *Id*. at 11 n.42. By comparison, MSS subscribership in the United States today numbers only in the hundreds of thousands. *See infra* notes 45-46 and accompanying text.

[19] *See* Comments of Inmarsat at 25.

[20] *Id.* at 25.

[21] *Id.* at 21.

[22] *See generally* Reply Comments of TMI.

[23] *See id.* at 8-13; *see also* Reply Comments of ICO at 10-11 & n.34.

[24] In the *Space Station Licensing* proceeding, the Commission proposed "a policy of redistributing the spectrum to the licensee or licensees remaining in operation . . . on a going forward basis." *Space Station Licensing Rules and Policies, Notice of Proposed Rulemaking*, IB Docket Nos. 02-34 & 00-248, 17 FCC Rcd 3847, 3864 ¶ 48 (2002). However, it expressly stated that "*[w]e emphasize that we are not addressing th[e] 2 GHz issue in this proceeding*, nor are we addressing any similar issues raised in any proceeding in which we have issued licenses in the past." *Id*. at 3864 ¶ 48 & n.54 (emphasis added) (citing *2 GHz Order*, 15 FCC Rcd at 16139 ¶ 18). Where the notice expressly takes 2 GHz MSS off the table for comment, it is not possible for the final rule to include 2 GHz MSS without

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giveaway pursuant to a policy that simply does not exist. Tellingly, the *Public Notice* proposes to modify the ICO and TMI licenses under Section 316, and does not refer to the clearly inapplicable policy on which TMI seeks to rely.[25]

The record is clear: neither TMI nor ICO has sustained its burden to demonstrate a compelling need for any spectrum giveaway – not the 10.67 MHz and certainly not the full 24 MHz of unassigned spectrum. Under these circumstances, the FCC should commence a rulemaking to consider the best use of the full 24 MHz of unassigned spectrum for the benefit of the public – not just these two private entities.

B. Because ICO and TMI Seek Additional Spectrum for Future *Terrestrial* ATC Plans, the Spectrum Should Be Reallocated

What the record does reveal is that ICO and TMI seek additional spectrum to further their terrestrial ATC plans.[26] TMI could not have been clearer: "[t]o deploy *a modern ATC network*, at least 2 x 10 MHz of spectrum is needed."[27] ICO has similarly advocated 2 x 10 MHz "to establish a fully competitive MSS *with an ancillary terrestrial component.*"[28] As the TMI and

(footnote continued)

running afoul of the fair notice requirements of the Administrative Procedure Act ("APA"). *See* Letters from Diane Cornell, CTIA to Marlene H. Dortch, Secretary, in IB Docket 99-81 *et al*. (May 19, 2005 & June 1, 2005) (hereby incorporated by reference).

[25] TMI also misconstrues the *AWS Third R&O*, *see* Reply Comments of TMI at 10 & n.23. Therein, the FCC provided for redistribution of spectrum abandoned "when the initial MSS milestone review is completed." When the FCC completed its initial milestone review, 5 licensees out of 8 remained to divide the 40 MHz MSS allocation, resulting in 8 MHz each. The current TMI and ICO authorizations reflect this result. With respect to spectrum abandoned *after* the first milestone review was completed, the FCC stated only that it would evaluate at a future date whether to redistribute or reallocate the spectrum. *See New Advanced Wireless Services, Third Report and Order*, 18 FCC Rcd 2223, 2238-39 ¶¶ 29, 32 (2003) (*"AWS Third R&O*").

[26] *See* Comments of CTIA at 2-3, 5, 9, 12; Inmarsat at 4, 18-20, 24, 28; T-Mobile at 4 n.11.

[27] Letter from Gregory C. Staple, Vinson & Elkins, Counsel for TMI, and Jonathan D. Blake, Covington & Burling, Counsel for TerreStar, to Donald Abelson, Chief, International Bureau, FCC, at 7 (Apr. 20, 2005) (emphasis added).

[28] Letter from Suzanne H. Malloy, Senior Regulatory Counsel, ICO, to Donald Abelson, Chief, International Bureau, FCC, ET Docket Nos. 02-34 & 02-248, at 1-2 (May 3, 2005) (emphasis added).

ICO submissions make plain, ATC has become "the new driver for the development of MSS business plans."[29]

The Commission made clear in providing for ATC, however, that it was not intended to justify access to more spectrum.[30] The Commission premised its decision to provide for ATC on the fact that "MSS ATC proponents *do not seek additional spectrum*, but rather greater authority to use spectrum previously licensed."[31] It therefore decided to grant MSS operators "the ability to provide more and better services" via ATC "with the *same amount of spectrum*."[32] In fact, the FCC expressly agreed with TMI's affiliate, MSV, that "parties could not legitimately identify terrestrial ATC usage to justify a larger MSS satellite spectrum assignment."[33] These issues were squarely raised in the IB Docket 05-220 comment cycle, yet neither ICO nor TMI offers any response on reply why they need *more* spectrum to do what ATC was adopted to allow using *existing* spectrum. Accordingly, terrestrial ATC plans cannot be used as the justification for an award of more satellite spectrum.

The Commission must squarely reject any effort by TMI and ICO to obtain additional spectrum for ATC under the guise of auction-exempt MSS spectrum. While Congress has stated that "spectrum used for the provision of international or global satellite communications services" may not be auctioned,[34] the D.C. Circuit recently found that this language does not

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[29] Comments of Inmarsat at 28.

[30] *See id.* at 18.

[31] *ATC Order*, 18 FCC Rcd at 1974 ¶ 20 (emphasis added).

[32] *Id*. (emphasis added).

[33] *See id*. at 2067 ¶ 215, *cited in* Comments of Inmarsat at 19. ICO likewise stated (at a time when it was authorized for less than 8 MHz) that "ATC use . . . may alleviate the need for the full amount of spectrum that is currently set aside for spectrum expansion." Comments of New ICO Global Communications in ET Dockets 00-258 & 95-18 & IB Docket 99-81 at 29 (Oct. 22, 2001), *cited in* Comments of CTIA at 7.

[34] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 § 647 (enacted Mar. 12, 2000), *codified at* 47 U.S.C. § 765f ("ORBIT Act").

preclude the auctioning of satellite-allocated spectrum used for terrestrial services.[35] Where, as here, additional spectrum is to be used for terrestrial mobile service, the Commission should not classify it as auction-exempt satellite spectrum but should reallocate it to flexible, terrestrial uses and award the spectrum at auction for the benefit of the public pursuant to Section 309(j). As the Commission previously envisioned, ICO and TMI can then seek to acquire such spectrum at auction "to provide additional terrestrial services that would complement their MSS (and ATC) offerings."[36] As discussed below, the Commission should thus commence a rulemaking to determine the best use of the full 24 MHz of unassigned spectrum, including reallocation to an auctionable service to allow the market to decide the highest and best use of the spectrum.

II. THE FCC SHOULD CONSIDER ALL 24 MHz IN A RULEMAKING, REALLOCATE IT, AND AUCTION IT TO DETERMINE ITS BEST USE

Consistent with the comments of Sirius Satellite Radio Inc. ("Sirius"), Intel Corporation ("Intel"), T-Mobile, Cingular Wireless LLC ("Cingular"), Inmarsat, and CTIA in IB Docket 05-220, the Commission should evaluate the best use of the unassigned spectrum – all 24 MHz – in a single rulemaking proceeding.[37] The breadth of comments from various segments of the communications industry – CMRS, Satellite Digital Audio Radio Service ("SDARS"), technology companies, and other MSS providers – demonstrates that this spectrum is of great value and demand is significant. Drawing on expert estimates, Intel has concluded that "an auction of terrestrial-only licenses for [the 24 MHz of returned] 2 GHz MSS spectrum would

[35] *See Northpoint Technology, Ltd. V. FCC*, No. 02-1194, Slip Op. at 20 (D.C. Cir. decided July 15, 2005).
[36] *New Advanced Wireless Services, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720, 20742 ¶ 46 & n.94, 20761 ¶ 96 (2004).
[37] *See* Comments of Sirius at 4; Comments of Intel at 12-13; Comments of T-Mobile at 10; Reply Comments of Cingular at 6; Comments of Inmarsat at 30-32; Reply Comments of CTIA at 1.

likely yield ***over $9 billion dollars*** for the U.S. Treasury."[38] Principles of sound spectrum management dictate that in light of such interest, the FCC should "develop one integrated record that includes all relevant spectrum management considerations for the full 24 MHz of unassigned 2 GHz MSS spectrum."[39]

The best use of the unassigned spectrum should be determined by market forces at auction by reallocating the spectrum to flexible, terrestrial use.[40] As Intel explains, "market-based spectrum valuations demonstrate that allocating all 24 MHz for terrestrial use would more effectively promote consumer welfare" and would lead to more "efficient use of this spectrum" than if only 13.33 MHz were reallocated to terrestrial use.[41]

Reallocation is also consistent with current exploding spectrum demands for terrestrial wireless vis-à-vis MSS. In its most recent *CMRS Competition Report*, the Commission estimated there were 160.6 million mobile telephone subscribers in the United States as of December 2003.[42] As of today, that number stands at approximately 192.6 million subscribers,[43] representing an increase of 32 million subscribers in an 18-month timeframe. By contrast, as the FCC has acknowledged, "the MSS industry as a whole has many fewer subscribers than

[38] Reply Comments of Intel at 9 (emphasis added). As CTIA has previously noted, the Commission recently placed a value of $4.86 billion on 10 MHz of nationwide spectrum in the 1.9 GHz band nearby the 2 GHz MSS band – approximately two-fifths of the overall amount of spectrum at issue here. *See* Comments of CTIA at 3.

[39] Reply Comments of Intel at 3. As Sirius states, "The current bifurcated process . . . is inefficient for addressing the surrendered spectrum and unnecessarily constrains both public input and the FCC's review of proposed uses for the spectrum." Comments of Sirius at 4.

[40] *See* Reply Comments of Intel at 12-13.

[41] Reply Comments of Intel at 13-14. TMI objects to reallocation because it would delay service to the public as a result of the time necessary to conduct a rulemaking and award the spectrum by auction, suggesting the spectrum giveaway it seeks would put the spectrum to use more quickly. *See* Reply Comments of TMI at 6. Yet, as TMI acknowledges, it will not launch its satellite for two years and operations are three years away. *Id*. at 7.

[42] *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Ninth Report*, 19 FCC Rcd 20597, 20668 ¶ 174 (2004) ("*Ninth CMRS Competition Report*").

[43] *See* <http://www.wow-com.com/>, visited July 20, 2005.

traditional CMRS."[44] While ICO and TMI have yet to commence operations, MSS is provided to a limited customer base by several operators in the Big LEO and L-Bands. According to the Commission, subscribers to MSS services worldwide numbered only 885,000 in 2004.[45] Domestic MSS subscription figures were not available, but the overall domestic subscriber count must be substantially less.[46] In any event, using the most conservative assumptions, terrestrial CMRS subscription is more than *200 times* that of MSS. Under these circumstances, it is clear that terrestrial CMRS service *should* be allocated substantially more spectrum than MSS.

Reallocation is particularly appropriate given that ICO and TMI have failed to justify a need for more spectrum, as noted above.[47] Further, as both are seeking additional spectrum for terrestrial ATC use, there is no justification not to reallocate it to terrestrial, flexible uses and allow market forces (auction) to determine the highest and best use.[48]

Nor is the fact that some of the spectrum is harmonized for international MSS use a bar to reallocation,[49] because neither TMI nor ICO is pursuing a global MSS system.[50] TMI has long planned to deploy only a regional GSO satellite.[51] And ICO, which two years ago argued in

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[44] *Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 25356 ¶ 37 (2003) ("*MSS E911 Order*").

[45] *Ninth CMRS Competition Report*, 19 FCC Rcd at ¶ 180.

[46] Globalstar has previously stated that "'there are at most a few hundred thousand MSS subscribers *total* in the United States.'" *MSS E911 Order*, 18 FCC Rcd at 25360 n.162 (emphasis in original) (quoting Comments of Globalstar U.S.A. and Globalstar, L.P. in CC Docket 94-102 at 14).

[47] *See* discussion *supra* Section I.A.

[48] MSS licensees can acquire such additional spectrum at auction like any other interested party. Because the spectrum will be used for terrestrial services, the ORBIT Act does not preclude using auctions to assign the spectrum. *See* discussion *supra* Section I.B.

[49] *See AWS Third R&O*, 18 FCC Rcd at ¶ 9 (indicating that the 2000-2010 MHz and 2180-2200 MHz bands are allocated globally to MSS).

[50] TMI and ICO are each currently licensed to construct a single GSO satellite. *See TMI Reinstatement Order* and *ICO Modification Order*, *supra* note 6.

[51] *See TMI Communications and Company, Limited Partnership*, 16 FCC Rcd 13808, 13808 ¶ 2 (IB 2001).

favor of preserving the harmonized 2 GHz bands for MSS,[52] has since "scrap[ped] its plans for a global NGSO network in favor of a stripped down, off-the-shelf, and far more modest regional GSO system."[53] Given these circumstances, the Commission should accede to Congress' "strong statutory preference . . . for use of auctions to assign spectrum rights."[54]

Inmarsat has asked that spectrum be set aside for future mobile *satellite* service expansion, but ICO points out that Inmarsat has access to use up to 66 MHz of L-Band spectrum and has already coordinated at least 20 MHz for its own use.[55] ICO questions Inmarsat's "alleged need for additional spectrum."[56] Ultimately, the question of whether a portion of the spectrum should be reserved, as Inmarsat requests, or whether Inmarsat's access to L-Band spectrum provides it with more than enough spectrum for future growth, as ICO suggests, is appropriately addressed in a comprehensive rulemaking.

Finally, there is no exigency present in this case which would justify avoiding a rulemaking.[57] TMI and ICO are not operational and have *no* immediate spectrum needs.[58] To the extent they seek additional spectrum now to "facilitate their ability to attract capital investment and execute their business plans,"[59] this is not a justification to avoid a thoughtful consideration of these public policy issues in a consolidated rulemaking.

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[52] *See* ICO, Petition for Reconsideration in ET Docket 00-258 (April 14, 2003).
[53] Comments of Inmarsat at 18.
[54] *Improving Public Safety Communications in the 800 MHz Band*, 19 FCC Rcd 14969, 15081 ¶ 213 (2004).
[55] *See* Reply Comments of ICO at 12.
[56] *Id.*
[57] *See* Reply Comments of Cingular at 7.
[58] *See* Comments of CTIA at 16 & n.71; Comments of Inmarsat at 31; Comments of Sirius at 5; *Cf. Big LEO NPRM*, 18 FCC Rcd at 2089 ¶ 266.
[59] Comments of ICO at 5.

CONCLUSION

For the reasons stated above and in the record in IB Docket 05-220, the Commission should evaluate the best use of the full 24 MHz of unassigned spectrum in a single rulemaking. To ensure that the spectrum is put to its most efficient and effective use, the spectrum should be reallocated to flexible, terrestrial use and made available at auction to all interested parties.

Respectfully submitted,

/s/ Diane J. Cornell

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